



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO 1653 OF 2017

ENOCK OGETO OTWORI.....1ST CLAIMANT

CALEB OOKO OGARE.....2ND CLAIMANT

SILAS KIOGORA MBURUGU.....3RD CLAIMANT

VERSUS

PUBLIC SERVICE COMMISSION.....1ST RESPONDENT

NATIONAL LAND COMMISSION.....2ND RESPONDENT

MINISTRY OF LANDS AND PHYSICAL PLANNING.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. By a Notice of Motion under certificate or urgency dated 23rd August 2017, the Claimants seek the following remedies:

- a) An order lifting and/reversing their suspension;
- b) An order reinstating them to their employment.

2. The application, which is supported by an affidavit sworn by the 1st Claimant, Enock Ogeto Otworu is based on the following grounds:

- a) The 1st and 2nd Claimants are employees of the Ministry of Lands and Physical Planning having been employed in 1990 and 2007 respectively;
- b) The 3rd Claimant was employed by the Ministry of Lands and Physical Planning in 1989 and was later transferred to the National Land Commission;
- c) On 16th January 2017, the 1st and 2nd Claimants received letters of suspension from the 3rd Respondent alleging that the Claimants were engaging in fraudulent subdivision of land and issuance of fake titles;

d) On 20th January 2017, the 3rd Claimant also received a letter of suspension, alleging that it had been reported by the Ethics and Anti-Corruption Commission that he was involved in fraudulent subdivision of land and issuance of fake titles;

e) The Claimants had recorded statements with the Ethics and Anti-Corruption Commission;

f) The Claimants asked to be provided with evidence of the allegations made against them but no such evidence was availed;

g) The Claimants had remained in suspension for eight (8) months, without any disciplinary action being taken against them.

3. The Respondent filed grounds of opposition on 27th September 2017 stating that:

a) The application lacks merit and is an abuse of the court process;

b) The suspension is an administrative action which the Court cannot interfere with, pending the outcome of investigation by relevant authorities;

c) The prayers sought in the application are final orders which cannot be granted by way of an application;

d) The employer cannot be forced to retain an employee who is subject to investigation by the Ethics and Anti-Corruption Commission.

4. I have looked at the prayers sought by the Claimants in this application and in the main claim and find that they are similar, meaning that the prayers sought in the application are final in nature. This Court is fully aware that in certain cases, final orders may be granted at the interlocutory stage. In the instant case however, a grant of the order sought would translate to an interim reinstatement.

5. This issue was considered by my brother **Rika J** in ***Alfred Nyungu Kimungui v Bomas of Kenya [2013] eKLR*** where he held that interim reinstatement is not an appropriate remedy because the Court has no chance to fully consider the general conduct of the complaining employee.

6. Addressing the same issue in ***Loice Mutai v Kenya Revenue Authority [2017] eKLR*** this Court rendered itself as follow:

“No doubt the Court has wide discretion to grant orders. Discretion must however always be exercised judiciously and with circumspection. This is more so because by ordering reinstatement, the Court is in effect, reversing a management decision. The Court must therefore tread with caution, especially at the interlocutory stage, when not all the facts are on the table. In my view, an employee seeking reinstatement must earn their stripes by going through a full trial.”

7. The Claimants complain that they have been subjected to a prolonged suspension and have thus been denied their right to be heard. These are legitimate complaints to be considered at the main trial. They cannot however be used as a basis for granting of final orders at the interlocutory stage.

8. Consequently, the Claimants’ application dated 23rd August 2016 is disallowed. The costs of the application will be in the cause.

9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF DECEMBER 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Moindi for the Claimants

Mr. Mutende for the Respondents